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In re Application of NAIR et al
U.S. Application No.: 09/787,368
Int. Application No.: PCT/AU99/00653
Int. Filing Date: 11 August 1999
Priority Date: 12 August 1998
Attorney Docket No.: 071550.0023
For: PURIFICATION OF BLOOD CLOTTING
PROTEINS

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This is in response to applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b)" filed 14 March 2001.

BACKGROUND

On 11 August 1999, applicants filed international application PCT/AU99/00653, which claimed priority of an earlier Australia application filed 12 August 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 24 February 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 06 January 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 12 February 2001.

International application PCT/AU99/00653 became abandoned as to the United States at midnight on 12 February 2001 for failure to pay the basic national fee.

On 14 March 2001, applicants filed the present petition. The petition states that it is accompanied by a continuation application filed under 37 CFR 1.53(b), the petition fee set forth in 37 CFR 1.17(m), and a statement that "the entire delay in filing such a U.S. National Phase application or such a U.S. continuation application from the due date for such filing until the filing of a grantable petition, namely this Petition, under 37 C.F.R. § 1.137(b), was unintentional."

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless

previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), the filing of the present continuation application under 35 U.S.C. 111 and 37 CFR 1.53(b) is accepted as the appropriate response under 37 CFR 1.137(b).

With regard to item (2), applicants have provided the required petition fee.

With regard to item (3), the petition states, "the entire delay in filing such a U.S. National Phase application or such a U.S. continuation application from the due date for such filing until the filing of a grantable petition, namely this Petition, under 37 C.F.R. § 1.137(b), was unintentional." This statement is interpreted as a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.


With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

International application PCT/AU99/00653 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present U.S. continuation application number 09/787,368.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision and will thereafter be forwarded to the Office of Initial Patent Examination for further processing and review as an application filed under 35 U.S.C. 111.


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